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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,545	08/01/2003	Michael F. Brletich	12539	2681

7590 02/21/2007  
PAUL F. DONOVAN  
ILLINOIS TOOL WORKS INC.  
3600 WEST LAKE AVENUE  
GLENVIEW, IL 60025

EXAMINER
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GARCIA, ERNESTO

ART UNIT	PAPER NUMBER
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3679

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/21/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/632,545	<b>Applicant(s)</b> BRLETICH ET AL.	
	<b>Examiner</b> Ernesto Garcia	<b>Art Unit</b> 3679	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 02 January 2007 and 29 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11-16 and 21-23 is/are pending in the application.
- 4a) Of the above claim(s) 22 and 23 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9 and 11-16 is/are allowed.
- 6) ☒ Claim(s) 1-8, 15 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 29, 2006 has been entered.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Election of Species***

Claims 22 and 23 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicants timely traversed the restriction (election) requirement in the reply filed on June 20, 2005.

Claim 21 has been examined and now the claim is readable upon the elected species; however, claims 22 and 23 are directed to the non-elected species and remain withdrawn accordingly.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 15, the recitation "the extension member extending across the flat surface edge" in lines 11-12 is misdescriptive or inaccurate since the flat surface edge has been defined as being part of the end cap in line 6 and therefore the extension member does not extend across this flat surface edge of the end cap that has been defined.

***Claim Rejections - 35 USC § 102***

Claims 1-8 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Antonucci et al., 6,119,306.

Regarding claim 1, Antonucci et al. disclose, in Fig. 35, a device comprising a fastener plug **13** including a plug portion **20'** and a fastener portion **24**. The plug portion **20'** defines an end cap **20'** and at least one disc **28** spaced apart from the end cap **20'**. The fastener portion **24** defines a flexible extension member **27** extending outwardly from the end cap **20'** and across the at least one disc **28**. The extension member **27** includes a projecting member **26'**. Given the structure of Antonucci et al. above, the disc is sized and shaped to mate with and seal an open end of a bar. The flexible extension member is able to flex as the member is installed in the open end of the bar and snap back to an original position when the projection member engages an aperture in a sidewall of the bar. Further, the disc defines a diameter slightly larger than a diameter of the open end of the bar, and the projection member can be adapted for operatively engaging the aperture in the sidewall of the bar.

Regarding claim 2, the end cap **20'** defines a peripheral edge **B1** (see marked-up attachment) and a flat surface edge **B2** along the peripheral edge **B1**. Note, the claims are written with a broad breadth that Antonucci et al. reads on this claim. Applicants should consider rephrasing that the peripheral edge has a truncated edge or truncated surface.

Regarding claim 3, a rib **A1** connects the disc **28** to the end cap **20'** (see marked-up attachment provided in the Office action mailed on 7/14/2005).

Regarding claim 4, the disc **28** is a plurality of discs **28** spaced apart from the end cap **20'**.

Regarding claim 5, the extension member **27** extends upwardly from the end cap **20'**.

Regarding claim 6, the extension member **27** extends across the discs **28**.

Regarding claim 7, the discs **28** define a flat surface edge **A2**.

Regarding claim 8, the projection member **26'** defines an inclined surface **A3**.

Regarding claim 15, Antonucci et al. disclose, in Figure 35, a device comprising a fastener plug **13**. The fastener plug **13** includes an end cap **20'** and discs **28** spaced apart and connected to the end cap **20'** by at least one rib **C1** (see marked-up attachment). The end cap **20'** defines a peripheral edge **B1** and a flat surface edge **B2** along the peripheral edge **B1**. The fastener plug **13** includes an extension member **27** extending outwardly from the end cap **20'** and across the discs **28**. The extension member has a fixed end connected to the end cap **20'** and a free end opposite the fixed end. The free end includes an aperture engaging-member **26'**.

Claim 21 is rejected under 35 U.S.C. 102(b) as being anticipated by Rabinovitz, 5,788,347.

Regarding claim 21, Rabinovitz discloses, in Fig. 1, a device comprising a plug **220** including an end cap **226** and a body **A1** (see attachment of Figure 3 for reference) extending from the end cap **226**. The end cap **226** includes a peripheral edge **A2** and a flat truncated surface **A3** along the peripheral edge **A2**. The plug further includes only one flexible extension member **A4** having an end fixed **A5** to the plug **220** and a free end **A6** opposite the fixed end **A5**. The flexible extension member **A4** includes at least a portion thereof extending between and with a space defined by the end cap **226** and a portion of the body that is spaced farthest from the end cap **226**. The free end **A6** includes **A6** an aperture-engaging member **222**. The plug **220** includes a portion **A7** on a side thereof directly opposite the flexible extension member **A4**.

Claims 1-3, 5, and 8 are rejected under 35 U.S.C. 102(e) as being anticipated by Kwilosz, 6,799,931.

Regarding claim 1, Kwilosz disclose, in Fig. 5, a device comprising a fastener plug **10** including a plug portion **200** and a fastener portion **14**. The plug portion **200** defines an end cap **200** and at least one disc **12** spaced apart from the end cap **200**. The fastener portion **14** defines a flexible extension member **22** extending outwardly from the end cap **200** and across the disc **12**. The extension member **22** includes a

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projecting member **54**. Given the structure of Kwilosz above, the disc is sized and shaped to mate with and seal an open end of a bar. The flexible extension member is able to flex as the member is installed in the open end of the bar and snap back to an original position when the projection member engages an aperture in a sidewall of the bar. Further, the disc defines a diameter slightly larger than a diameter of the open end of the bar.

Regarding claim 2, the end cap **200** defines a peripheral edge and a flat surface edge along the peripheral edge. Note, the claims are written with a broad breadth that Kwilosz reads on this claim. Applicants should consider rephrasing that the peripheral edge has a truncated edge or truncated surface.

Regarding claim 3, a rib **30** connects the disc **12** to the end cap **200**.

Regarding claim 5, the extension member **22** extends upwardly from the end cap **200**.

Regarding claim 8, the projection member **54** defines an inclined surface (the ramp).



***Allowable Subject Matter***

Claims 9 and 11-16 are allowed.

The following is a statement of reasons for the indication of allowable subject matter:

regarding claim 9, the prior art of record does not disclose or suggest a device comprising a fastener plug including an end cap defining a flat truncated surface along a peripheral edge (lines 10-11) in combination with a flexible extension member extending outwardly from the end cap across and spaced apart from at least one disc (lines 6-7). The closest prior art, Antonucci et al., 6,119,306, and Brugger et al., 6,003,556, do not teach the end cap being flat and truncated. Gieling et al. 5,144,780, Harley, 5,226,808, Ishikawa et al., 5,560,253, Rabinovitz, 5,788,347, and Sarafinas, 3,119,299, teach a flat truncated surface along a peripheral edge; however, there is no motivation to combine Antonucci et al. or Brugger et al. with Gieling et al., Harley, Ishikawa et al., Rabinovitz, and Sarafinas;

regarding claims 11-14, these claims directly or indirectly depend from claim 9;

regarding claim 16, the prior art of record does not disclose or suggest a device comprising an aperture-engaging member defining opposing columns joined together by a rib; there is no motivation absent applicant's own disclosure to modify the references because no one teaches the subject matter to facilitate insertion and removal of the aperture-engaging member within and out of an opening formed in a trashcan bar.

### ***Response to Arguments***

Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ernesto Garcia whose telephone number is 571-282-7083. The examiner can normally be reached from 9:30-5:30. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached at 571-272-7087.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*E.P.*

*Daniel P Stodola*

E.G.

February 7, 2007

Attachment: one marked-up page of Antonucci et al., 6,119,306  
one marked-up page of Rabinovitz, 5,788,347

DANIEL P. STODOLA  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600

Antonucci et al., 6,119,306

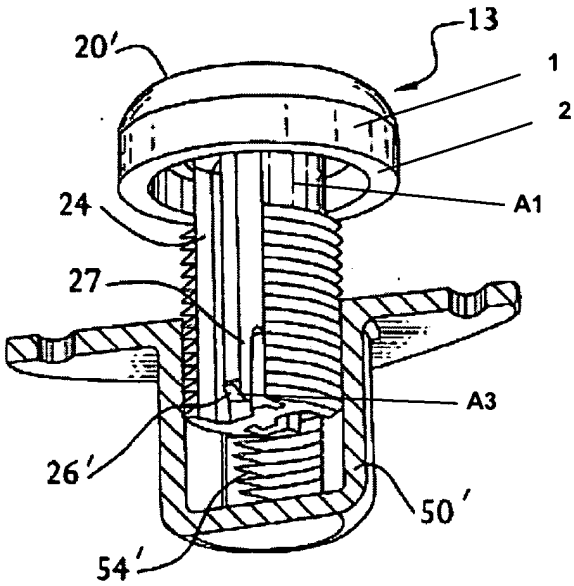


FIG. 35

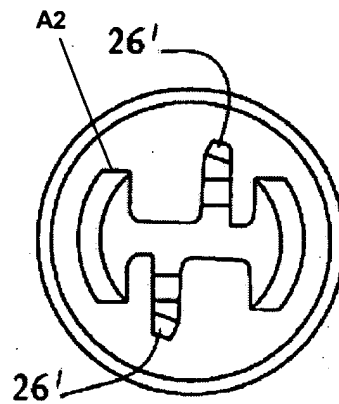


FIG. 40

Rabinovitz, 5,788,347

FIG. 3

